

Attorney Docket No. P67671US0
Application No.: 10/069,128

Remarks/Arguments:

The specification is amended, hereby, as required in the Office Action. Sequence identifiers found in the sequence listing are inserted into the specification immediately adjacent to corresponding sequences. Minor changes are, also, made to correct clerical errors (by inserting hyphens that are missing between adjacent amino acids).

Claims 15-21, presented hereby, are pending.

Claims 8-14 are canceled, hereby, without prejudice or disclaimer.

Claims 15-21 contain the subject matter of claims 8-14, rewritten as "method" claims.

Claims 8-14 were rejected under 35 USC 101 for allegedly being improper "use" claims. Similarly, claims 8-14 were rejected under 35 USC 112, second paragraph, for allegedly being indefinite, i.e., for reciting a use without reciting positive method/process steps. Reconsideration of the rejections under §101 and §112, second paragraph, is requested in view of the changes to the claims effected by the instant amendment.

In accordance with the instant amendment, *method of treatment* claims 15-19 replace claims 8-12, which cover the use of natriubiotics for the treatment of pathogenically altered bacterial flora; present claim 20, which defines a *method of food preservation*, replaces claim 13, which covers the use of natriubiotics for food preservation; and, present claim 21, which defines a *method of controlling bacterial growth in a fermentation process for foodstuffs*, replaces claim 14, which covers the use of natriubiotics in fermentation processes for foodstuffs.

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For the foregoing reasons, the rejections under §112, paragraph two, and §101 are overcome, hereby, and withdrawal of the rejections appears in order.

Claims 8-14 were rejected under §102(b) for being allegedly anticipated by CA2188143 ("Forssmann"). Reconsideration is requested in view of the instant Amendment.

The rejection interprets the rejected claims as defining the *use of a natriubiotic to make a pharmaceutical agent by combining the natriubiotic with a carrier*. As so interpreted, it is alleged that the claims are fully met by the teachings of Forssmann (page 2, ¶1) to make a pharmaceutical agent by combining (a natriubiotic) with a carrier. While Forssmann does not teach that ANP has antibiotic properties, the rejection maintains that properties of a product have no limiting effect on claims defining a method of making the product.

For anticipation under § 102 to exist, each and every claim limitation, as arranged in the claim, must be found in a single prior art reference. *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 225 USPQ 253 (Fed. Cir. 1985). The absence from a prior art reference of a single claim limitation negates anticipation. *Kolster Speedsteel A B v. Crucible Inc.*, 230 USPQ 81 (Fed. Cir. 1986). A reference that discloses "substantially the same invention" is not an anticipation. *Jamesbury Corp.* To anticipate the claim, each claim limitation must "*identically appear*" in the reference disclosure. *Gechter v. Davidson*, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997) (*emphasis added*). To be novelty defeating, a reference must put the public in possession of the identical invention claimed. *In re Donahue*, 226 USPQ 619 (Fed. Cir. 1985).

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None of present claims 15-19 defines a method of making a product. The method of present claims 15-19 comprises treatment of a patient suffering from pathogenically altered bacterial flora by administering to the patient "a natriubiotic," in combination with a pharmaceutically acceptable carrier. Thus, a limitation on the present claims, i.e., "treating pathogenically altered bacterial flora" is absent from the allegedly novelty-defeating reference, i.e., Forssmann.

In that a single limitation on present claims 15-19 is absent from Forssmann, anticipation based on Forssmann would be negated. *Kolster Speedsteel A B, supra*, and the rejection is therefore, inapplicable against present claims 15-19.

Present claim 20 defines a method of food preservation by adding a natriubiotic to the food. Present claim 21 defines a method for controlling bacterial growth in a fermentation process involving foodstuffs by adding a natriubiotic to the food as it is fermenting. Forssmann discloses neither a method of food preservation nor a method of controlling bacterial growth in a fermentation process. In that a limitation on each of present claims 20 and 21 is absent from Forssmann, anticipation of either present claim 20 or claim 21 based on Forssmann would be negated, *Kolster Speedsteel A B, supra*, and, as such, the rejection cannot be applied against either present claim 20 or present claim 21.

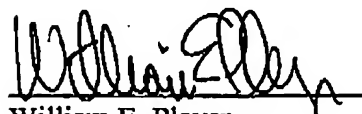
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Favorable action is requested.

Respectfully submitted,

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